

**BEFORE THE  
GOVERNING BOARD  
OF THE LOS NIETOS SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:  
Dulce Alvarado and other Certificated Staff of  
the Los Nietos School District,

OAH Case No. 2012030482

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 24, 2012, at Whittier, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Aaron V. O'Donnell, Atkinson, Andelson, Loya, Ruud & Romo. All Respondents were represented by Angela Serranzana and Kent Morizawa, Reich, Adell & Cvitan, with the exception of Richard Mireles.

All Respondents, identified below, were present, with the exception of Dulce Alvarado and Richard Mireles.

At the outset of the hearing, Respondents' counsel provided a list of the persons they represented, and a hand-written list of Respondent in attendance. Those two documents will be marked collectively as Exhibit A and made part of the record.

Oral and documentary evidence was received, argument was heard, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order, as follows.

**FACTUAL FINDINGS**

1. Complainant Jonathan Vasquez filed and maintained the Accusation<sup>1</sup> in the above-captioned matter while acting in his official capacity as Superintendent of the Los Nietos School District (District).

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<sup>1</sup> The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503; that statutory scheme governs the hearing procedures in this case. The Respondents are not "accused" in the everyday sense of that word; they have done nothing wrong, and all appear to be dedicated professionals. It might be said that they are simply accused of not having enough seniority or other qualifications to retain their positions with the District in the face of a resolution to reduce positions.

2. The following persons are certificated employees of the District and are the Respondents in this case: Dulce Alvarado, Anne Anderson, Teri Applebaum, Elsa Avina, Christina Ayala, Christine Cuellar, Hanh Bui, Charlyn Fijan, Don Fulton, Monica Goco, Cynthia Gomez, Jennifer Gomez, Stephen Jurado, Kelly Kidwell-Collazo, Julie Little, Rosa Mercado, Richard Mireles, Gabrielle Orellana (Garcia), Renee Pacheco, Monica Quiroz, Steven Risser, Jessica Sullivan, Flormirella Trujillo, Olivia Vinas, and Stacy Wolf.

3. (A) On February 23, 2012, the Governing Board of the District (Board) adopted Resolution number 07-11/12, entitled “Resolution for Reduction or Discontinuance of Particular Kinds of Services” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2012-2013 school year. Specifically, the resolution requires the reductions of 24 “FTE”—Full Time Equivalents—by reducing various types of services. This decision was based on financial concerns as the District faces a budget shortfall.

(B) The FTEs that the Board determined to reduce are described in the Reduction Resolution, as follows:

K-6 Elementary Teaching Services	17
RHP Teaching Services	1
LH Teaching Services	1
RHI Intervention Teaching Services	5
Total FTE to be reduced:	24

4. On that same date, the Board adopted resolution 08-11/12, which established “tie breaking” criteria for determining seniority in cases where two or more certificated employees share the same seniority date. The tie-breaking criteria were based solely on the needs of the District and its students.

5. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>2</sup>

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given the uncertainty regarding the state budget and the District’s financial resources.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

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<sup>2</sup> All further statutory references are to the Education Code.

8. (A) Complainant, in his capacity as Superintendant of the District, made a written recommendation to the Board regarding the individuals to be laid off in order to comply with the Reduction Resolution. The list set out in the recommendation identified 24 teachers, further noting that six of them were temporary or substitute teachers who normally would not be entitled to a preliminary notice, but who should receive such a notice as a precaution. Those teachers were identified as Christina Chavez, Janei Dominguez, Allison Hung, Susana Marquez, and Hanh Nguyen. None of these teachers became Respondents in this proceeding, as none requested a hearing.

(B) Complainant further recommended that, as a precaution, certain teachers should receive preliminary lay-off notices. This was to provide a large enough pool of teachers who could be laid in the event that there had been a miscalculation regarding seniority, bumping rights, or skipping rights. By noticing these teachers, the District could be assured of eliminating 24 FTE if a miscalculation was established. The teachers who received those precautionary notices are Christina Ayala, Charlyn Fijan, Rosa Mercado, Gabriela Orellana (Garcia), Monica Quiroz, Flormirella Trujillo, and Olivia Vinas.

9. (A) On or about February 24, 2012, each Respondent and other certificated teachers were given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2012-2013 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing, and each was then served with an Accusation and other documents pertaining to the hearing process. Each Respondent filed a notice of defense in a timely manner. However, those temporary or substitute teachers who received preliminary notices, identified in Finding 8(A), above, did not request a hearing.

(B) Following the service of the preliminary notices, and prior to the hearing, the District rescinded the preliminary notice given to Dulce Alvarado, because she had obtained a credential allowing her take a position in special education.

(C) All jurisdictional requirements have been met.

10. To implement the reduction in force, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service and the information used in the tie-breaking criteria, such as credential types and post-graduate degrees. No evidence was received that would cause a change to the seniority list, with the exception of the District's admission that Ms. Alvarado had obtained another credential, for special education, which may not be reflected in the seniority list.

11. In determining who would receive final lay off notices, the District staff evaluated whether any senior teacher could displace or "bump" a junior teacher. In various cases such senior teachers did displace junior teachers. Thus, for example, Olivia Vinas, number 65 on the seniority list, could bump Jessica Sullivan, number 83 on the list. After considering such bumping rights, it was determined that those teachers who received precautionary notices, identified in Finding 8(B), could be dismissed from this proceeding.

12. As a result of the foregoing, no junior certificated employee is being retained in a position which a senior employee is certificated and competent to fill.

### **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 9(C).

2. (A) A District may reduce particular kind of services (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 3, 5, 6, 7, and 8 and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, a junior teacher may be given retention priority over one or more senior teachers—may be “skipped” in favor of senior employees—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) No Respondent who did not receive a precautionary notice established that he or she had the right to bump a junior employee or that he or she should have been skipped, based on the foregoing rules and Factual Findings 10 through 12.

## **ORDER**

1. The following Respondents may receive final layoff notices: Anne Anderson, Teri Applebaum, Elsa Avina, Christine Cuellar, Hanh Bui, Don Fulton, Monica Goco, Cynthia Gomez, Jennifer Gomez, Stephen Jurado, Kelly Kidwell-Collazo, Julie Little, Richard Mireles, Renee Pacheco, Steven Risser, Jessica Sullivan, and Stacy Wolf.

2. Respondents Dulce Alvarado, Christina Ayala, Charlyn Fijan, Rosa Mercado, Gabriela Orellana (Garcia), Monica Quiroz, Flormirella Trujillo, and Olivia Vinas are dismissed as Respondents and they shall not receive a final layoff notice.

April 25, 2012

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings